

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kelly Lyon	Team: Squad #10	CCRB Case #: 202004559	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/06/2020 9:45 PM	Location of Incident: The 46th Precinct stationhouse	Precinct: 46	18 Mo. SOL 12/6/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sun, 06/07/2020 7:42 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/24/2020 11:18 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Richard Barcia	13255	961635	046 PCT
2. DTS Luis Cruz	5460	941601	046 PCT
3. POF Merlyn Bermudez	29834	942760	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Julio Toro	07319	965888	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Richard Barcia	Abuse: Police Officer Richard Barcia threatened to arrest § 87(2)(b)	
B.POF Merlyn Bermudez	Off. Language: Police Officer Merlyn Bermudez made remarks to § 87(2)(b) based upon race.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On June 7, 2020, § 87(2)(b) filed this complaint with IAB by phone. It was received at the CCRB on June 24, 2020, under IAB log number #2020-15163. This complaint originally contained two incident dates; however, it was split into this case and CCRB case #§ 87(2)(b) to cover the second incident date.

On June 6, 2020, at approximately 9:32 p.m., in the vicinity of 1975 Walton Avenue in the Bronx, § 87(2)(b) s § 87(2)(b) -old son, § 87(2)(b) was arrested by PO Richard Barcia, Det. Richard Cruz, and PO Julio Toro of the 46th Precinct for violating the curfew.

At approximately 9:45 p.m., § 87(2)(b) went to the 46th Precinct stationhouse in the Bronx with her boyfriend, § 87(2)(b). Inside the stationhouse, § 87(2)(b) and § 87(2)(b) spoke with PO Barcia. PO Barcia asked § 87(2)(b) a question and § 87(2)(b) answered on her behalf. PO Barcia told § 87(2)(b) that he needed to leave because he was not § 87(2)(b) s parent or guardian. PO Barcia threatened to arrest § 87(2)(b) for trespassing if he did not leave the stationhouse (**Allegation A: Abuse of Authority – Threat of arrest**, § 87(2)(g)).

§ 87(2)(b) and § 87(2)(b) went outside of the stationhouse to wait for § 87(2)(b) to be released. § 87(2)(b) spoke to PO Bermudez who allegedly stated, “We are all white and you should understand that,” or “we are all white and we should understand each other” (**Allegation B: Offensive Language – Race**, § 87(2)(g)).

§ 87(4-b), § 87(2)(g)

This incident resulted in one juvenile arrest (§ 87(2)(a) Fam. Ct. Act § 881.3) of § 87(2)(b) however, none of the allegations pertained to § 87(2)(b).

The investigation obtained two body-worn camera videos (**BR 01** and **BR 02**; *videos*, and **BR 03**; *summaries*), however, the footage did not capture any of the allegations. There was no other video footage of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Richard Barcia threatened to arrest § 87(2)(b)

§ 87(2)(b) consistently stated (**BR 04**, **BR 05**, and **BR 06**) that her son, § 87(2)(b) was outside with five of his unidentified friends when he was arrested by officers who had bothered him in the past. One of § 87(2)(b) s friends called § 87(2)(b) and informed her that § 87(2)(b) had been arrested.

§ 87(2)(b) and her boyfriend, § 87(2)(b) went to the 46th Precinct stationhouse. PO Barcia informed § 87(2)(b) that § 87(2)(b) was “picked up” for being out past the curfew. PO Barcia asked § 87(2)(b) a question about § 87(2)(b) and § 87(2)(b) answered it for her. PO Barcia told § 87(2)(b) to leave and said that he had nothing to do at the stationhouse because he was not the father or a parent. § 87(2)(b) asked PO Barcia for the real reason why § 87(2)(b) was arrested. PO Barcia called § 87(2)(b) a “smart aleck” and said, “If you don’t have any more smart questions then you have to leave.” § 87(2)(b) and § 87(2)(b) explained that they were together, and PO Barcia said to § 87(2)(b) “If you don’t get out, I will arrest you because that is trespassing.”

§ 87(2)(b) received a phone call from her mother and PO Barcia told § 87(2)(b) to leave because she could not be on the phone inside the stationhouse. § 87(2)(b) went outside to wait for § 87(2)(b) to be released. § 87(2)(b) asked other officers why her son was picked up but no one else who was out past curfew and mentioned that § 87(2)(b) was only around the corner from his residence. PO Barcia stated that he gave § 87(2)(b) a warning first before arresting him.

§ 87(2)(b) stated (**BR 07**) that he and § 87(2)(b) went to the stationhouse approximately 10 minutes after § 87(2)(b) was transported. § 87(2)(b) and § 87(2)(b) asked why § 87(2)(b) was arrested. An officer, possibly a detective, told § 87(2)(b) that

they wanted to speak to her and § 87(2)(b) about an incident that occurred on Walton Avenue and § 87(2)(b) said, “No. We’re not saying anything about that because you guys aren’t being justified about why you arrested § 87(2)(b).” The officer said, “Can I speak to mom?” and § 87(2)(b) said, “No, I’m speaking for her.” The officer then said, “You’re going to have to leave. If you don’t leave, then you will be considered trespassing.” PO Barcia then told § 87(2)(b) that he would be arrested if he did not leave. § 87(2)(b) said, “Why do I have to leave, this is a public place.” PO Barcia escorted § 87(2)(b) out of the stationhouse and § 87(2)(b) came outside as well.

PO Barcia stated (BR 08) that after bringing § 87(2)(b) to the 46th Precinct stationhouse, he notified § 87(2)(b)’s guardian/ mother, § 87(2)(b) who arrived at the stationhouse with her boyfriend § 87(2)(b). PO Barcia was not aware of any relation between § 87(2)(b) and § 87(2)(b). PO Barcia did not remember whether he called § 87(2)(b) or she showed up on her own.

PO Barcia tried to have a conversation with § 87(2)(b) in the 124 room across from the front desk, but § 87(2)(b) kept interrupting and elevating the pitch of his voice. PO Barcia told § 87(2)(b) “Now you have to leave.” § 87(2)(b) refused and said, “Why do I have to leave, I don’t have to leave.” PO Barcia informed § 87(2)(b) that if he did not leave, he would be arrested for criminal trespass. PO Barcia did not recall whether he told § 87(2)(b) to leave more than once. Then § 87(2)(b) complied and was permitted to wait outside despite the curfew.

Neither Det. Cruz (BR 09) nor PO Bermudez (BR 10) recalled witnessing the threat of arrest.

New York Penal Law § 140.05 (BR 11) states that a person is guilty of trespass when they knowingly enter or remain unlawfully in or upon premises.

§ 87(2)(g)

Allegation (B) Offensive Language: Police Officer Merlyn Bermudez made remarks to § 87(2)(b) based upon race.

According to her memo book (BR 12), it was undisputed that PO Bermudez was on duty when § 87(2)(b) was at the 46th Precinct stationhouse waiting for § 87(2)(b) to be released. Whether PO Bermudez interacted with § 87(2)(b) or made any comments based upon race was disputed. It was also undisputed that § 87(2)(b) interacted with PO Bermudez on § 87(2)(b), during a separate incident which was covered under CCRB § 87(2)(b).

§ 87(2)(b) stated (BR 06) that while she was waiting outside of the stationhouse, there were officers standing by a gate. § 87(2)(b) spoke with PO Bermudez who said something to the effect of, “We are all white and you should understand that,” or “we are all white and we should understand each other.” § 87(2)(b) did not understand what PO Bermudez meant by that statement.

§ 87(2)(b) mentioned that PO Bermudez was the only female on scene during § 87(2)(b), incident covered under CCRB #§ 87(2)(b). She described PO Bermudez as a Hispanic female with a light complexion, who was 5’3” tall, had a thin build, weighed 130 pounds, and had curly blonde hair in a bun.

PO Bermudez’s pedigree sheet (BR 13) and MOS photo (BR 14) show that PO Bermudez is 5’0” to 5’1” tall, weighs between 115 and 140 pounds, and has curly brown hair.

§ 87(2)(b) (BR 07) did not describe interacting with PO Bermudez.

PO Bermudez stated (BR 10) that she did not recall ever interacting with § 87(2)(b) on June 6, 2020. PO Bermudez stated that she never said, “We are all white and you should understand that,” or, “we are all white and we should understand each other.” PO Bermudez never made any remarks to § 87(2)(b) based on race. PO Bermudez stated that during a typical tour she may return to the stationhouse to use the restroom for example. PO Bermudez did not remember ever

interacting with civilians outside of the stationhouse during the curfew which took place in June 2020.

Neither PO Barcia (**BR 08**) nor Det. Cruz (**BR 09**) recalled observing § 87(2)(b) ever interacting with PO Bermudez and neither witnessed PO Bermudez or any other officer making any comments based upon race.

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - - PO Barcia has been a member of service for 4 years and named a subject in three additional CCRB complaints and 6 allegations, none of which were substantiated.
 - § 87(2)(g)
 - PO Bermudez has been a member of service for 14 years and named a subject in six additional CCRB complaints and 12 allegations, three of which were substantiated.
 - CCRB #200902979 involved a substantiated allegation of a stop. The Board recommended Command Discipline and the NYPD imposed Instructions.
 - CCRB #201001405 involved substantiated allegations of a stop and frisk. The Board recommended Command Discipline and the NYPD imposed no disciplinary action.
 - § 87(2)(g)
 - Det. Cruz has been a member of service for 14 years and named a subject in eight additional CCRB complaints and 14 allegations, none of which were substantiated.
 - § 87(4-b), § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation.
- As of March 26, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**BR 19**).
- According to the Office of Court Administration (OCA), neither § 87(2)(b) nor § 87(2)(b) have a history of convictions in New York City (**BR 20** and **BR 21**).

Squad No.: 10

Investigator: Kelly Lyon Inv. Kelly Lyon 5/11/2021
Signature Print Title & Name Date

Squad Leader: Eric Rigie IM Eric Rigie 5/14/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date